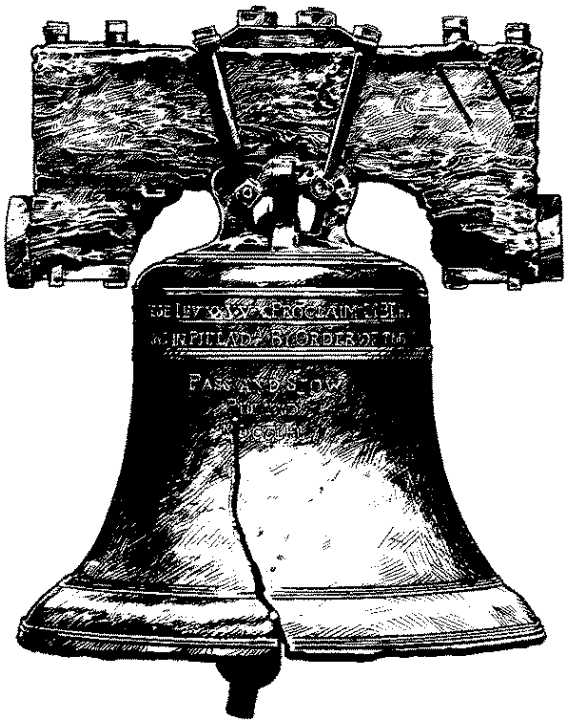
SEARCH & SEIZURE
("THE EXCLUSIONARY RULES")

I believe you will find these cases and this issue to be very difficult. Not in the sense of hard to understand, but in the sense of a proper outcome. See for yourself if you don't waffle on some of these.



Buckeye State

MAPP v. OHIO

SUPREME COURT OF THE UNITED STATES
367 U.S. 643
June 19, 1961

OPINION: Mr. Justice CLARK…Appellant stands convicted of knowingly having had in her possession and under her control certain lewd and lascivious books, pictures, and photographs in

violation of [Ohio's criminal statutes.]…[T]he Supreme Court of Ohio found that her conviction was valid though based primarily upon the introduction in evidence [of items]…**unlawfully seized** during an **unlawful search** of [her] **home**…

On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that 'a person was hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of **policy paraphernalia** being hidden in the home.' Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling…The officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant. They advised their headquarters of the situation and undertook a surveillance of the house.

I have no idea what "policy paraphernalia" is unless it is a typo in the original case. Should it be "police paraphernalia?" I don't know. I did check several sources, however, and they all say "policy paraphernalia." Such appears irrelevant to our discussion.

The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. It appears that Miss Mapp was halfway down the stairs from the upper floor to the front door when the officers…broke into the hall. She demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the 'warrant' and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been 'belligerent' in resisting their official rescue of the 'warrant' from her person. Running roughshod over appellant, a policeman 'grabbed' her, 'twisted her hand,' and she 'yelled and pleaded with him' because 'it was hurting.' Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. They also looked into a photo album and through personal papers belonging to the appellant. The search spread to the rest of the second floor including the child's bedroom, the living room, the kitchen and a dinette. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best, 'There is…considerable doubt as to whether there ever was any warrant for the search of defendant's home.' The Ohio Supreme Court believed a 'reasonable argument' could be made that the conviction should be reversed because the 'methods' employed to obtain the (evidence) were such as to offend a sense of justice, but **the [conviction was affirmed because]…<u>the evidence</u> had not been taken 'from defendant's <u>person</u> by the use of brutal or offensive physical force against defendant.'**

The State says that even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial, citing *Wolf v. Colorado* (1949), in which this Court did indeed hold 'that in a prosecution in a **State court** for a **State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure.'…It is urged…that we review that holding.**

In other words, as of 1949 the Fourth Amendment was held not to apply to State action through the Fourteenth Amendment and, therefore, although illegally obtained evidence could not be used in a Federal prosecution, it could be used in a State prosecution.

Seventy-five years ago, in *Boyd v. United States* (1886),…this Court held that the doctrines of [the Fourth and Fifth] Amendments 'apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property… Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation…(of those Amendments).'…

Less than 30 years after *Boyd*, this Court, in *Weeks v. United States* (1914), stated that 'the 4th Amendment…put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints…**Specifically dealing with the use of the evidence unconstitutionally seized, the *Weeks* Court concluded**:

> 'If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures **is of no value …[and] might as well be stricken from the Constitution**. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, **are not to be aided by the sacrifice of those great principles** established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.'

Finally, the Court in that case clearly stated that use of the seized evidence involved 'a denial of the constitutional rights of the accused.' Thus, in the year 1914, in the *Weeks* case, this Court 'for the first time' held that **'in a federal prosecution** the Fourth Amendment barred the use of evidence secured through an illegal search and seizure.' This Court has ever since required of **federal** law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required—even if judicially implied—deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to 'a form of words.' It meant, quite simply, that 'conviction by means of unlawful seizures and enforced confessions… should find no sanction in the judgments of the courts…' (*Weeks*) and that **such evidence 'shall not be used at all.**' *Silverthorne Lumber Co. v. United States*…

This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public trial, including, as it does, the right not to be convicted by use of a coerced confession, however logically relevant it be, and without regard to its reliability. And nothing could be more certain than that when a coerced confession is involved, 'the relevant rules of evidence' are overridden without regard to 'the incidence of such conduct by the police,' slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effect, documents, etc.?

...[O]ur holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. Moreover, as was said in *Elkins*, 'the very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts.' Such a conflict, hereafter needless, arose this very Term, in *Wilson v. Schnettler* (1961), in which, and in spite of the promise made by *Rea*, we gave full recognition to our practice in this regard by refusing to restrain a federal officer from testifying in a state court as to evidence unconstitutionally seized by him in the performance of his duties. Yet the double standard recognized until today hardly put such a thesis into practice. **In non-exclusionary States, federal officers, being human, were by it invited to and did, as our cases indicate, step across the street to the State's attorney with their unconstitutionally seized evidence. Prosecution on the basis of that evidence was then had in a state court in utter disregard of the enforceable Fourth Amendment. If the fruits of an unconstitutional search had been inadmissible in both state and federal courts, this inducement to evasion would have been sooner eliminated.** There would be no need to reconcile such cases as *Rea* and *Schnettler*, each pointing up the hazardous uncertainties of our heretofore ambivalent approach…

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine 'the criminal is to go free because the constable has blundered.' *People v. Defore*. In some cases this will undoubtedly be the result. But, as was said in *Elkins*, 'there is another consideration—the imperative of judicial integrity.' The criminal goes free, if he must, but it is the law that sets him free. **Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence**. As Mr. Justice Brandeis, dissenting, said in *Olmstead* (1928)[1]: 'Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example…If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.' Nor can it lightly be assumed that, as a practical matter, adoption of the exclusionary rule fetters law enforcement. Only last year this Court expressly considered that contention and found that 'pragmatic evidence of a sort' to the contrary was not wanting. *Elkins*. The Court noted that 'The federal courts themselves have operated under the exclusionary rule of *Weeks* for almost half a century; yet it has not been suggested either that the

[1] Case 4A-1 on this website.

[FBI] has thereby been rendered ineffective, or that the administration of criminal justice in the federal courts has thereby been disrupted. Moreover, the experience of the states is impressive … The movement towards the rule of exclusion has been halting but seemingly inexorable.'

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

The judgment of the Supreme Court of Ohio is reversed…

CONCURRENCE: Mr. Justice DOUGLAS…The Ohio Supreme Court sustained the conviction even though it was based on the documents obtained in the lawless search. For in Ohio evidence obtained by an unlawful search and seizure is admissible in a criminal prosecution at least where it was not taken from the 'defendant's person by the use of brutal or offensive force against defendant.' This evidence would have been inadmissible in a federal prosecution. *Weeks*; *Elkins*. For, as stated in the former decision, 'The effect of the 4th Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints…It was therefore held that evidence obtained (which in that case was documents and correspondence) from a home without any warrant was not admissible in a federal prosecution…

When we allowed States to give constitutional sanction to the 'shabby business' of unlawful entry into a home…, we did indeed rob the Fourth Amendment of much meaningful force. There are, of course, <u>other theoretical remedies</u>. One is <u>disciplinary action</u> within the hierarchy of the police system, including prosecution of the police officer for a crime. Yet as Mr. Justice Murphy said in *Wolf*, 'Self-scrutiny is a lofty ideal, but its exaltation reaches new heights if we expect a District Attorney to prosecute himself or his associates for well-meaning violations of the search and seizure clause during a raid the District Attorney or his associates have ordered.'

The only remaining remedy, if exclusion of the evidence is not required, is an <u>action of trespass</u> by the homeowner against the offending officer. Mr. Justice Murphy showed how onerous and difficult it would be for the citizen to maintain that action and how meagre the relief even if the citizen prevails. The truth is that trespass actions against officers who make unlawful searches and seizures are mainly illusory remedies…

Wolf was decided in 1949. The immediate result was a storm of constitutional controversy which only today finds its end. I believe that this is an appropriate case in which to put an end to the asymmetry which *Wolf* imported into the law. It is an appropriate case because the facts it

presents show—as would few other cases—the casual arrogance of those who have the untrammeled power to invade one's home and to seize one's person…

DISSENT: Mr. Justice HARLAN/FRANKFURTER/WHITTAKER…**I would not impose upon the States this federal exclusionary remedy**. The reasons given by the majority for now suddenly turning its back on *Wolf* seem to me notably unconvincing.

First, it is said that 'the factual grounds upon which *Wolf* was based' have since changed, in that more States now follow the *Weeks* exclusionary rule than was so at the time *Wolf* was decided. While that is true, a recent survey indicates that at present one-half of the States still adhere to the common-law non-exclusionary rule, and one, Maryland, retains the rule as to felonies. But in any case surely all this is beside the point, as the majority itself indeed seems to recognize. Our concern here, as it was in *Wolf*, is not with the desirability of that rule but only with the question whether the States are Constitutionally free to follow it or not as they may themselves determine, and the relevance of the disparity of views among the States on this point lies simply in the fact that the judgment involved is a debatable one. Moreover, the very fact on which the majority relies, instead of lending support to what is now being done, points away from the need of replacing voluntary state action with federal compulsion…

Problems of criminal law enforcement vary widely from State of State. One State…may conclude that the need for embracing the *Weeks* rule is pressing because other remedies are unavailable or inadequate to secure compliance with the substantive Constitutional principle involved. Another…may choose to pursue one purpose at a time, allowing all evidence relevant to guilt to be brought into a criminal trial, and dealing with Constitutional infractions by other means. Still another may consider the exclusionary rule too rough-and-ready a remedy, in that it reaches only unconstitutional intrusions which eventuate in criminal prosecution of the victims. Further, a State after experimenting with the *Weeks* rule for a time may, because of unsatisfactory experience with it, decide to revert to a non-exclusionary rule. And so on. From the standpoint of Constitutional permissibility in pointing a State in one direction or another, I do not see at all why 'time has set its face against' the considerations which led Mr. Justice Cardozo…to reject for New York in *People v. Defore*, the *Weeks* exclusionary rule. For us the question remains…one of state power, not one of passing judgment on the wisdom of one state course or another. In my view this Court should continue to forbear from fettering the States with an adamant rule which may embarrass them in coping with their own peculiar problems in criminal law enforcement…I regret that I find so unwise in principle and so inexpedient in policy a decision motivated by the high purpose of increasing respect for Constitutional rights. But in the last analysis I think this Court can increase respect for the Constitution only if it rigidly respects the limitations which the Constitution places upon it, and respects as well the principles inherent in its own processes. In the present case I think we exceed both, and that our voice becomes only a voice of power, not of reason.